IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7995 of 1997

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTIBHAI AMBALAL PATEL & 5 - Petitioner(s)
Versus
BARODA GENERAL INDUSTRIES & 1 - Respondent(s)

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Appearance :
MR NR SHAHANI for Petitioner(s) : 1 - 6.
MR AMIT M.PANCHAL for M/S TRIVEDI & GUPTA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 25/10/2007

ORAL JUDGMENT

The petitioners before this Court are the six workmen employed by the respondent no.1 Baroda General Industries. The petitioners challenge the

judgment and award dated 15th May, 1997 passed by the Labour Court, Vadodara in Reference (LCV) No.19/1987.

It is not in dispute that the petitioners-workmen were employed by the respondent no.1 Baroda General Industries (hereinafter referred to as, **"the Firm"**). The Firm had closed down on 7th August, 1986. The workmen were paid the closure compensation in accordance with law. Feeling aggrieved, the workmen raised industrial dispute. According to the workmen, after the notice of closure those of the workmen who had accepted the retrenchment were absorbed in the respondent no.2 – Ms.Extrusion Processes Private Limited (hereinafter referred to as, **"the Company"**). Whereas, the petitioners-workmen who did not accept the retrenchment were given closure compensation but were not absorbed in the service of the Company. Before the Conciliation Officer the workmen maintained that the Firm was controlled by the Company. The Firm and the Company had a common manufacturing unit within the same compound, had staff which were inter-transferable, etc. The workmen, therefore, were entitled to absorption in

the service of the Company. The said dispute came to be referred to the Labour Court, Vadodara and registered as above.

Before the Labour Court, the workmen gave evidence in support of their claim that the Firm was controlled by the Company and for the purpose of implementation of labour laws the Firm and the Company were single entity.

The Labour Court, by impugned judgment and award dated 15th May, 1997, held that the workmen had proved that the Company had the control over the Firm. However, the Court refused to order reinstatement in service or absorption in service of the Company as the Company was not a party before the Labour Court. To mitigate the situation in favour of the workmen, the Labour Court directed the Company to absorb the workmen in its service as fresh entrants. Feeling aggrieved, the workmen have preferred the present petition.

Mr.Sahani has advanced long winding arguments

how the Firm and the Company were one single entity and why the workmen were entitled to reinstatement in service of the Company. In support thereof, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **The Workmen Employed in Associated Rubber Industry Limited, Bhavnagar v/s. The Associated Rubber Industry Limited, Bhavnagar** [AIR 1986 SC 1]. He has not challenged the closure of the Firm. Nor he has argued that the workmen be reinstated in the service of the Firm.

Mr.Panchal has contested the petition. He has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Hindustan Steel Works Construction Limited and others v/s. Hindustan Steel Works Construction Limited Employees' Union, Hyderabad and another** [(1995)3 SCC 474].

It appears that the workmen raised dispute against the Firm. It was the Firm against whom the reference was registered. The reference made to the Labour Court was in respect of reinstatement of workmen in service in their original post. This would

necessarily mean that what the workmen challenged was the closure of the Firm and claimed right to reinstatement in service. However, in substance, there was no challenge to the closure. The workmen were paid the closure compensation. In the circumstances, the question of reinstatement of the workmen in service of the Firm would not arise. What was argued really was the workmen's right to absorption or appointment in the service of the Company as a matter of course. Nevertheless, the said claim was not made against the Company nor the Company was made party to the reference. In absence of the Company, the Court below could not have recorded finding in respect of the Company's existence or common control of the Company and the Firm. Nor could the workmen be directed to be absorbed in the service of the Company or to be appointed by the Company.

In my opinion, the claim made against the Company could not have been entertained in absence of the Company. The Court below has rightly refused to grant relief against the Company.

In above view of the matter, the petition is dismissed. Rule is discharged. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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